

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.308 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

and

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

SUPER CAST ALLOY FOUNDRIES LTD

Appearance:

1. INCOME TAX REFERENCE No. 308 of 1992
MR MANISH R BHATT for Applicant No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 02/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B', has referred the following question of law for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax, Rajkot :

"Whether on the facts and in the circumstances the Appellate Tribunal was right in law in holding that rectification order dtd.31.3.86 u/s. 154 of the Act by the ITO in respect of the assessment order Dtd.25.3.82 was barred by time on the ground that un-amended provisions of section 154(7) were applicable ?"

2. The Assessment Year is 1979-80 and the relevant accounting period is 31st December, 1978. The assessment order was framed under Section 143(3) of the Act on 25th March, 1982. The Assessing Officer passed an order under Section 154 of the Act for the purposes of reworking the depreciation allowance to which the assessee was entitled and the said order was made on 31st March, 1986.

3. The assessee challenged the rectification order before the Commissioner (Appeals) who, for the reasons stated in his order dated 18th April, 1989, confirmed the action of the Assessing Officer. The assessee carried the matter in appeal before the Tribunal. Vide order dated 28th December 1991 the Tribunal accepted the contention raised on behalf of the assessee that the order of rectification was barred by limitation and hence, quashed and set aside the same. It is against this order of the Tribunal that the Revenue is in reference before this Court.

4. Heard the learned Standing Counsel for the applicant - Revenue. Though served there is no appearance on behalf of the respondent - assessee.

5. The case of the assessee in nutshell is that the period of limitation for passing an order of rectification is prescribed under Section 154(7) of the Act. That the said provision was amended by Taxation Laws (Amendment) Act, 1984 w.e.f. 1st October, 1984, but the time limit of four years from the date of assessment order had to be taken into consideration and not the amended provision. On the other hand, according to the Revenue, once the provision was amended, the extended period of limitation would apply and if the said amended provision was applied to the facts of the case, the order of rectification under Section 154 of the Act was within

the period of limitation.

6. The relevant provision before the amendment reads as under :

"(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years from the date of the order sought to be amended. "

The relevant provision after the amendment reads as under :

"(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years [from the end of the financial year in which the order sought to be amended was passed.] "

7. Therefore, the Assessing Officer under the provision before the amendment was permitted to amend an order within the period of four years from the date of the order sought to be amended. As against that by virtue of the amended provision the period of limitation within which an order could be rectified stood extended in as much as the period of four years had to be computed from end of financial year in which the order sought to be amended was passed.

8. The assessment order was dated 25th March, 1982. The original period of limitation under the unamended provision would have expired on 24th March, 1986. However, by virtue of the amendment carried out by the Taxation Laws (Amendment) Act the said period stood extended upto 31st March, 1986 and the rectification order has admittedly been made on 31st March, 1986. The limited question, therefore, is whether the amendment of Section 154(7) of the Act which comes into effect from 1st October, 1984 can be invoked in these circumstances ?

9. It is not necessary to set out the contentions raised on behalf of the Revenue in detail for the simple reason that the issue stands concluded by decision of this Court in the case of Commissioner of Income-tax Vs. Royal Motor Car Co., [1977] 107 ITR 753. This Court while dealing with a similar issue in relation to imposition of penalty under Section 271(1)(c) of the Act has held thus:

"..... It is well-settled law that as regards

matters of procedure, the legislature can make changes and those changes would apply so far as limitation is concerned to pending proceedings unless a vested right has accrued to any party by reason of the old period of limitation having expired. "

"At least so far as the question of limitation is concerned, it is obvious that the old section cannot apply after the Amendment Act since the entire old section was substituted by the new section and what we are concerned with in the present case is the application of the well-settled rule of law that limitation is a matter of procedure and unless there is something in the context or by express words the legislature has expressed it, new period of limitation would always apply to pending proceedings as well. "

This decision has been reiterated and followed in case of Commissioner of Income-tax, Gujarat-IV Vs Balabhai & Co., [1980] 122 ITR 301 (Guj.).

10. In light of the aforesaid settled position of law, the impugned order of the Tribunal holding that the rectification order was barred by limitation is not correct. There is no indication in the context of the Amendment Act, nor is there any express provision which would prohibit the assessing authority from passing an order of rectification within the extended period of limitation. There is no dispute that the period of limitation under the unamended provision had not expired when the amendment was made in the statute.

The question referred to the Court is, therefore, answered in the negative i.e. in favour of the Revenue and against the assessee.

11. Before parting it is necessary to take note of the fact that the learned advocate for the applicant Revenue had cited a case Commissioner of Income-tax Vs. Dhadi Sahu, [1993] 199 ITR 610 (S.C.) to submit that the decision of this Court in Royal Motor Car Company (supra) was approved by the Apex Court. It is true that the Apex Court has approved the decision of this Court in case of Royal Motor Car Company (supra), but the decision is approved on the second question that was posed before this Court and not on the issue which is arising in the present reference.

12. The reference stands disposed of accordingly.
There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA, J] [H.N.DEVANI, J]

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